



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200, ROOM 1545
SAN FRANCISCO, CA 94102

April 11, 2024

Dr. Mildred García
Chancellor
San Francisco State University
401 Golden Shore
Long Beach, CA 90802

By email only to csu-chancellor@calstate.edu

Re: San Francisco State University – OCR Case Number 09-23-2553

Dear Dr. García:

This letter notifies you of the resolution of the above-referenced complaint to the U.S. Department of Education (Department), Office for Civil Rights (OCR) against San Francisco State University (University). The Complainant (the identity of whom OCR previously disclosed to the University) alleged that the University discriminated against her on the basis of race and sex. Specifically, OCR investigated the following issue:

Whether the University retaliated against the Complainant in the [redacted content] 2022, [redacted content] 2022, and [redacted content] 2023 semesters after she filed a complaint in [redacted content] 2021 alleging discrimination on the basis of race and sex.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d-2000d-7, and its implementing regulations, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin under any program or activity receiving federal financial assistance. OCR also enforces Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106, which prohibit discrimination on the basis of sex in any education program or activity operated by a recipient of federal financial assistance. As a recipient of federal financial assistance from the Department, the University is subject to Title VI and Title IX.

Prior to OCR completing its investigation and making a compliance determination, the University expressed an interest in voluntary resolution pursuant to Section 302 of OCR's [Case Processing Manual](#) (CPM), dated July 18, 2022, and OCR determined it was appropriate to do so.

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

Issue: Whether the University retaliated against the Complainant in the [redacted content] 2022, [redacted content] 2022, and [redacted content] 2023 semesters after she filed a complaint in [redacted content] 2021 alleging discrimination on the basis of race and sex.

Legal Standards

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., and its implementing regulation at 34. C.F.R. § 100.7(e), provides that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by regulations enforced by OCR or because one has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing held in connection with a complaint. The following three elements must be satisfied to establish a prima facie case of retaliation: (1) an individual engaged in a protected activity; (2) an individual experienced an adverse action caused by the recipient; and (3) there is some evidence of a causal connection between the adverse action and the protected activity. When a prima facie case of retaliation has been established, OCR then determines whether there is a facially legitimate, non-retaliatory reason for the adverse action; and if so, whether the facially legitimate, non-retaliatory reason is a pretext for retaliation. The regulation implementing Title IX, at 34 C.F.R. § 106.71, incorporates by reference the retaliation provisions of Title VI.

Facts

The Complainant filed a complaint with the University on or around [redacted content] 2023 (Complaint) and alleged retaliation against her in the [redacted content] 2022, [redacted content] 2022, and [redacted content] 2023 semesters by multiple faculty members and administrators after she had filed a complaint in [redacted content] 2021 alleging discrimination on the basis of race and sex. The Complainant told OCR that the Complaint identified Respondent A and other faculty as the individuals who retaliated against her. She also told OCR that during an intake meeting with the University about her complaint, she added allegations against Respondent B and Respondent C.

Article IV, Section D of the CSU Policy Prohibiting Discrimination, Harassment, Sexual Misconduct, Sexual Exploitation, Dating Violence, Domestic Violence, Stalking, and Retaliation (Nondiscrimination Policy) states that “[t]he Title IX Coordinator/DHR Administrator will determine whether to open an investigation after making a preliminary inquiry into the allegations.” Furthermore, Article IV, Section D.i. states that “[w]ithin 10 Working Days of the date of an intake meeting or receipt of a request for investigation from the Complainant (whichever is later), ... the Title IX Coordinator/DHR Administrator will send a notice of investigation to the Complainant and Respondent.”

The Complainant told OCR that on [redacted content], 2023, she emailed the University about the status of her complaint and was informed that Notices of Investigation would be sent out within two weeks. She said she then received an email from the University on [redacted content], 2023, which explained that notices had not been prepared due to staffing issues.

On [redacted content], 2023, the Complainant received an email from the University with a draft Notice of Investigation and an invitation for the Complainant to provide additional information about each alleged incident of discrimination on the basis of race and sex by Respondent A. The

Complainant responded to the University by email with concerns that the investigation process is compromised and with concerns that she will continue to experience retaliation. She also requested that the University pause the investigation. Furthermore, the Complainant told OCR that the Notice of Investigation was narrow in scope and failed to address her allegations against Respondents B and C.

Counsel for the University explained to OCR the reason for the delay in issuing a Notice of Investigation following receipt of the Complaint. Counsel stated that each time that the University spoke with the Complainant, the Complainant presented new information. The University had hoped to issue one comprehensive Notice of Investigation to encompass all allegations raised by the Complainant and the University required additional time to review and assess the new information in order to do so. Given the delay, however, the University subsequently modified its approach and contacted the Complainant with a draft Notice of Investigation for the initial allegations against Respondent A, and it instructed the investigator to conduct further intake and issue additional Notice(s) of Investigation as appropriate to include other respondent(s) and/or allegation(s).

Analysis

When a recipient receives a complaint of retaliation, it must examine whether the alleged victim engaged in a protected activity and was subsequently subjected to adverse action by the university, under circumstances that suggest a connection between the protected activity and the adverse action.

In this case, OCR has a compliance concern with respect to the University's processing of the Complaint. The Complainant filed the Complaint on or around [redacted content], 2023, and the University issued a draft Notice of Investigation four months later, on [redacted content], 2023, despite a prescribed timeframe for issuing notices of investigation as set forth in the University's Nondiscrimination Policy. The University acknowledged the delay and provided OCR with an explanation for the delay. It has also committed to conducting and completing an investigation of the Complaint in a timely manner.

To address the complaint allegations and OCR's concerns identified in the investigation, the University, without admitting to any violation of law, entered into the enclosed resolution agreement. The University has agreed to: investigate the Complainant's allegation(s) consistent with Title VI, Title IX, and applicable University complaint procedures, and issue a written guidance memorandum and facilitate training for Equity Programs & Compliance Office, Human Resources, and Faculty Affairs personnel who have duties related to the University's responsibility to ensure compliance with Title IV and Title IX about: (1) the University's nondiscrimination policies, including its prohibition on retaliation; and (2) the University's policies and procedures for reporting and responding to complaints of discrimination, including retaliation.

Overall Conclusion

This concludes the investigation of this complaint.

Based on the commitments made in the enclosed resolution agreement, OCR is closing the investigation of this complaint as of the date of this letter and notifying the complainant concurrently. When fully implemented, the resolution agreement is intended to address the evidence obtained and all of the allegations investigated. OCR will monitor the implementation of the resolution agreement until the University is in compliance with the terms of the resolution agreement and the statutes and regulations at issue in the case.

OCR's determination in this matter should not be interpreted to address the University's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the University must not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a separate retaliation complaint with OCR.

Under the Freedom of Information Act (FOIA), it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by the law, personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of privacy if released.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Civil Rights Attorneys Laura Welp at laura.welp@ed.gov and Ellen Moy at ellen.moy@ed.gov.

Sincerely,

/s/

Naghmeh Ordikhani
Team Leader

Enclosure

Cc: Alison Kleaver, University Counsel
(by email only)